

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

ELIZABETH MAULLER

Appellant

v.

DIVISION OF EMPLOYMENT SECURITY

Respondent

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DOCKET NUMBER **WD72901**

DATE: February 22, 2011

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Appeal From:

Labor and Industrial Relations Commission

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Appellate Judges:

Division One

Thomas H. Newton, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

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Attorneys:

Joseph L. Green, St. Louis, MO

Counsel for Appellant

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Attorneys:

Ninion S. Riley, Jefferson City, MO

Counsel for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

ELIZABETH MAULLER, Appellant, v.  
DIVISION OF EMPLOYMENT SECURITY, Respondent

WD72901

Labor and Industrial Relations Commission

Before Division One Judges: Thomas H. Newton, P.J., James M. Smart, Jr., and Joseph M. Ellis, JJ.

Ms. Elizabeth Mauller worked for Employer, a catering company, on an on-call basis. Employer called Ms. Mauller in February 2009 to ask her to work an event the next day. Ms. Mauller was ill and explained she could not work the event. Two weeks later Ms. Mauller called Employer and asked if work was available; Employer stated that it was slow and no work was available. Approximately a month later, Employer called Ms. Mauller and informed her that a paycheck was waiting for her. Ms. Mauller again inquired about work but was told none was available. In June 2009, Ms. Mauller asked for separation papers. She subsequently applied for unemployment benefits. She was initially denied benefits, but that decision was reversed after review by the Appeals Tribunal. Employer sought review, and the Commission reversed and found Ms. Mauller ineligible because she left work voluntarily without good cause attributable to the work or to Employer. Ms. Mauller appeals.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED**

**Division One holds:**

Ms. Mauller raises two points on appeal. She argues that she did not leave work voluntarily, and, alternatively, if she did, her departure was for good cause attributable to Employer because Employer offered her no further work.

First, whether an employee quits or is discharged may be determined by examining whether the final act severing the employment relationship was committed by the employer or the employee. The final act severing Ms. Mauller's employment was that she voluntarily requested separation papers while still on Employer's call list. Ms. Mauller's unemployment was a direct and immediate consequence of her action. Consequently, the Commission did not err in determining that Ms. Mauller left work voluntarily.

Second, "good cause" to voluntarily terminate employment is found when the employee's conduct conforms to what an average person, who acts with reasonableness and in good faith, would do. Here, Ms. Mauller did not meet her burden to show good cause. Employer testified that employees were to call in for work; Ms. Mauller failed to diligently follow up in finding out whether work was available and failed to inquire as to whether work would become available before quitting. Good cause is not shown where an employee fails to seek a resolution before quitting. However, as the Division concedes, the Commission erroneously found the date of Ms. Mauller's departure to be the day after she last worked for Employer; the correct date is the day Ms. Mauller requested separation papers. Ms. Mauller's first and second points are denied.

The Division further argues we should find Ms. Mauller eligible for temporary unemployment benefits for the time period between her last date of working for Employer and the date she requested separation papers. Eligibility for temporary unemployment benefits requires further factual findings and determinations. Therefore, we reverse the date of departure, affirm the decision in all other respects, and remand the temporary unemployment issue to the Commission.

**Opinion by: Thomas H. Newton, Judge**

February 22, 2011

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